

What is a Quasi-Judicial Decision?



In today's **Leveson** hearing, James Murdoch gave **evidence** and testified to the role Jeremy Hunt, Secretary of State for Culture, Media and Sport, played in the News Corp. bid for BSkyB. As the hearing progressed, questions emerged about the relationship between James Murdoch and Hunt throughout the process as a series of email exchanges between Hunt's office and James Murdoch was **published** as evidence.

The procedure for mergers is set out in the **Enterprise Act** while the **Communications Act** sets out the things that the minister and Ofcom should take into account in deciding if the merger raises public interest considerations sufficient to necessitate a referral to the competition commission.

Commentators have been saying that the key issue is whether Hunt's approach is appropriate for a 'quasi-judicial' decision. This was the same issue that led to the removal of Vince Cable from the same merger decision in December 2010. The opposition and journalists will be asking what a quasi-judicial decision is.

Administrative lawyers don't generally like the term, finding it vague, but the term is used for certain ministerial decisions such as whether to confirm a compulsory purchase order. According to **Wade and Forsyth**: "The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objectors and not (for example) to take fresh evidence without disclosing it to them"*. For example, if Hunt or his advisors had discussed evidence pertinent to the merger decision with News Corp and this was not made transparent, this could create problems for Hunt.

It is nowhere written in the legislation that the minister should exercise 'quasi-judicial' authority, however if the decision were to be challenged it could be challenged on the basis that it was reached using a procedure that was not appropriate to a decision of this type.

* the footnote here references a judgement by Lord Hoffmann in R (Alconbury Developments Ltd). V. Secretary of State for Environment, Transport and the Regions [2001] 2 WLR 1389 at 1402.

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